



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2012-1045

RIN 1625AA00

Safety Zone; Military Munitions Recovery, Raritan River,
Raritan, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone within the waters of the Raritan River upstream of the Perth Amboy Railroad Bridge. This safety zone is necessary to provide for the protection of the maritime public and safety of navigation during removal of underwater explosive hazards in the Raritan River. This action will protect the public from the dangers posed by underwater explosives by restricting unauthorized persons and vessels from traveling through or conducting underwater activities within a portion of the Raritan River while military munitions are rendered safe, detonated, and/or removed from the area. Entry into this zone (as well as a broad array of other actions) will be prohibited within the

safety zone unless authorized by the Captain of the Port New York or the designated on-scene representative.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-1045]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Hannah Eko, U. S. Coast Guard, Sector New York, Waterways Management Division, telephone (718) 354-4114, e-mail Hannah.O.Eko@uscg.mil or BMC Craig Lapeijko, Coast Guard First District Waterways Management Branch, telephone (617) 223-8381, e-mail craig.d.lapeijko@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
USACE	United States Army Corps of Engineers

A. Regulatory History and Information

On September 19, 2013 the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; Military Munitions Recovery, Raritan River, Raritan, NJ" in the Federal Register (78 FR 57567). We received 0 comments on the NPRM.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1., which collectively authorize the Coast Guard to establish safety zones.

The purpose of this rule is to protect vessel traffic from the dangers of underwater explosives by restricting unauthorized persons and vessels from traveling through or conducting underwater activities within a portion of the Raritan River while military munitions are rendered safe, detonated, or removed from the area. The United States Corps of Army Engineers (USACE) is conducting a remedial investigation within the

Raritan River using advanced metal detection, removal, and detonation techniques. The prior start date of spring 2013 was delayed by application reviews and is now scheduled to begin in the spring of 2014.

C. Discussion of Comments, Changes, and the Final Rule

No comments were received concerning this rule.

The Coast Guard will establish a safety zone encompassing all navigable waters of the Raritan River upstream of the Perth Amboy Railroad Bridge to ensure the safety of mariners and vessels around the military munitions removal area.

These safety zones will be enforced while on-scene workers are retrieving military munitions that could pose a hazard to persons or vessels operating in the area. Each military munitions retrieval is expected to require the activation of the safety zone for a minimum of 60 minutes. Intended work hours (subject to change) are 6:00 a.m. through 6:00 p.m., Monday through Friday. The USACE will provide notice of the activation of the safety zone via vessels stationed at the eastern and western boundaries of the safety zone. These vessels will have flashing yellow lights to alert mariners to their presence and that the safety zone is being enforced.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize

our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this rule would restrict access to a small portion of the Raritan River until military munitions are rendered safe and removed, the effect of this regulation would not be significant due to the following reasons: the safety zone will cover only a small portion of the navigable waters within the Raritan River during limited intervals of time. We expect portions of the safety zone to be activated for short period while the military munitions are being removed or detonated. In addition, vessels may be authorized to enter the zone with permission of the COTP.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the

potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit, fish, dive, or anchor in a portion of the Raritan River upstream of the Perth Amboy Railroad Bridge during the time the safety zone is activated.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone will only be activated for limited periods of time while the USACE is retrieving or detonating military munitions. Vessel traffic will be minimal because the location of the safety zone is in an area that does not experience high volumes of vessel traffic, with typical commercial traffic being very minimal. Upstream recreational vessel entities will be contacted concerning this safety zone. Before the activation of the zone, maritime advisories will be

issued and widely available to users of the waterway in the vicinity of the Raritan River.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast

Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone in a portion of the Raritan

River. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.170 to read as follows:

§ 165.170 Safety Zone; Military Munitions Recovery, Raritan River, Raritan, NJ.

(a) Location. The following area is a safety zone: All navigable waters of the Raritan River upstream of the Perth

Amboy Railroad Bridge, which spans the waterway at approximately 40°29'46.3"N, 74°16'51.5"W.

(b) Definitions. The following definitions apply to this section:

(1) "Designated representative" means any U.S. Army Corps of Engineers personnel, any commissioned, warrant, or petty officer of the U.S. Coast Guard, and any member of the Coast Guard Auxiliary who has been designated by the Captain of the Port New York (COTP), to act on his or her behalf. As a designated representative, the U.S. Army Corps of Engineers official patrol vessel will communicate with vessels via VHF-FM radio or loudhailer.

(2) "Official patrol vessel" means any Coast Guard, Coast Guard Auxiliary, Army Corp of Engineers, state, or local law enforcement vessels assigned or approved by the COTP.

(c) Regulations. (1) The general regulations in 33 CFR 165.23 apply.

(2) Entry, transit, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining or anchoring within the safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP.

(3) Upon being hailed by a U.S. Coast Guard vessel, U.S. Army Corps of Engineers vessel or a designated representative, by siren, radio, flashing light, or other means, the operator of

a vessel shall proceed as directed.

(4) Vessel operators desiring to enter, transit, dive, dredge, dump, fish, trawl, conduct salvage operations, remain within or anchor within the safety zone must contact the COTP or a designated representative via VHF channel 16 or by phone at (718) 354-4353 (Sector New York Command Center) to request permission.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative.

Dated: March 28, 2014

G. Loebel,
Captain, U.S. Coast Guard
Captain of the Port New York

[FR Doc. 2014-08247 Filed 04/11/2014 at 8:45 am; Publication
Date: 04/14/2014]